

OCT 10 2007

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID ESPARZA-PEREZ, a.k.a. Jose
Luis Sandoval-Calderos,

Defendant - Appellant.

No. 07-50092

D.C. No. CR-06-01898-JAH-1

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
John A. Houston, District Judge, Presiding

Submitted October 1, 2007 ^{**}

Before: B. FLETCHER, BERZON and IKUTA, Circuit Judges.

We have reviewed the record and the opening brief and conclude that the questions raised in this appeal are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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curiam) (stating standard). The United States Supreme Court's decision in *Almendarez-Torres v. United States*, 523 U.S. 224, 247 (1998), remains binding on this court until the Court overrules it. *See United States v. Weiland*, 420 F.3d 1062, 1079 n.16 (9th Cir. 2005) (noting that this court remains bound by the Supreme Court's holding in *Almendarez-Torres* that a district court judge may enhance a sentence on the basis of prior convictions, even if the fact of those convictions was not found by a jury beyond a reasonable doubt).

Accordingly, the government's unopposed motion for summary affirmance of the district court's judgment is granted.

AFFIRMED.